

As stated, the Court of Appeals reversed and remanded for further proceedings the Appeals Board's finding of a 100 percent wage loss. That finding was based upon the claimant's actual wage loss. The Court of Appeals determined, however, that the difference in pre- and post-injury wages can be based on the actual wages only when the fact finder has

first made a finding that claimant made a good faith effort to find appropriate employment. The Court held that "[p]ursuant to K.S.A. 44-510e(a), if a finding is made that a good faith effort has not been made to find appropriate employment, the factfinder will have to determine an appropriate post-injury wage based on all the evidence before it, including expert testimony concerning the capacity to earn wages." Copeland v. Johnson Group, Inc., 24 Kan. App. 2d 306, Syl. ¶ 8, 944 P.2d 179 (1997).

Claimant applied for unemployment compensation shortly after learning that she had been terminated by respondent. She was still receiving those benefits at the time of both the regular hearing and the continuation by deposition of the regular hearing. Although claimant did not recall the names of all of the employers where she had made contacts, it was claimant's testimony that she had contacted at least three employers a week every week since her unemployment compensation was begun. Based upon that testimony and claimant's other testimony concerning her job search efforts, the Appeals Board finds that claimant made a good faith effort to find appropriate employment. She is, accordingly, entitled to a 100 percent wage loss based upon her actual wages pre- and post-injury.

The Court of Appeals also remanded for clarification of the Appeals Board's findings concerning whether the respondent made claimant an offer of accommodated employment. The Appeals Board found that no specific accommodations were ever offered. Furthermore, even if the employer was willing to accommodate claimant's temporary restrictions from Dr. Brad W. Storm, the respondent withdrew any such offer of accommodation by terminating claimant before she could attempt any job. The claimant never refused to attempt accommodated work. Therefore, there is no wage to impute under the analysis of Foulk v. Colonial Terrace, 20 Kan. App. 2d 277, 887 P.2d 140 (1994), *rev. denied* 257 Kan. 1091 (1995).

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that its May 10, 1996, Order is affirmed as follows:

AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Fannie L. Copeland, and against the respondent, Johnson Group, Inc., and its insurance carrier, Travelers Insurance Company, and the Kansas Workers Compensation Fund, for an accidental injury which occurred September 23, 1993, and based upon an average weekly wage of \$296.50, for 7.29 weeks of temporary total disability compensation at the rate of \$197.68 per week or \$1,441.09, followed by 332 weeks at the rate of \$197.68 per week or \$65,629.76 for an 80% permanent partial general body disability, making a total award of \$67,070.85.

As of June 5, 1998, there is due and owing claimant 7.29 weeks of temporary total disability compensation at the rate of \$197.68 per week or \$1,441.09, followed by 237.85 weeks of permanent partial disability compensation at the rate of \$197.68 per week in the sum of \$47,018.19, for a total of \$48,459.28 which is ordered paid in one lump sum less any amounts previously paid. The remaining balance of \$18,611.57 is to be paid for 94.15 weeks at the rate of \$197.68 per week, until fully paid or further order of the Director.

All other orders contained in the Appeals Board's May 10, 1996, Order and the March 23, 1995, Award by the Administrative Law Judge are hereby adopted by the Appeals Board to the extent they are not inconsistent with the findings herein.

IT IS SO ORDERED.

Dated this ____ day of June 1998.

BOARD MEMBER PRO TEM

BOARD MEMBER

BOARD MEMBER

c: Robert W. Harris, Kansas City, KS
Frederick J. Greenbaum, Kansas City, KS
Elizabeth A. Kaplan, Kansas City, KS
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Philip S. Harness, Director